

Notice of Allowability

Application No.

10/034,139

Examiner

Navin Natnithadha

Applicant(s)

FOX ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to I.D.S., 14 October 2005.
2. ☒ The allowed claim(s) is/are 1,2,4,6-30,32 and 34-56.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 10142005
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S COMMENT

Information Disclosure Statement

1. The information disclosure statement filed 14 October 2005 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). However, authorization to charge the Applicants' Deposit Account in order to pay the required fee was given in an telephonic interview with Karen S. Canady on 20 October 2005. Therefore, the information disclosure statement has been placed in the application file, and the information referred to therein has been considered.

REASONS FOR ALLOWANCE

2. Claims 1, 23, 29, and 51 have been amended. Claims 3, 5, 31, 33, and 57-110 have been cancelled. Claims 1, 2, 4, 6-30, 32, and 34-56 are pending.

3. Applicants' arguments, see Remarks, pages 11-13, filed 10 October 2005, with respect to claims 1, 23, 29, and 51 have been fully considered and are persuasive. The 35 U.S.C. 102(b) and 35 U.S.C. 103(a) rejections of claims 1, 2, 4, 6-30, 32, and 34-56 have been withdrawn.

4. Claims 1, 2, 4, 6-30, 32, and 34-56 are allowed.

5. The following is an examiner's statement of reasons for allowance:

Independent Claims 1, 23, 29, and 51: Say, the closest prior art reference, does not teach determining whether a most recent of the series of physiological characteristic values is within a qualifying range, and calculating a slope of a line fit to the series of physiological characteristic values IF (emphasis added) the most recent of the series of

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physiological characteristic values is within the qualifying range. Say teaches away from Applicants' invention because it teaches indicating a hyperglycemic or hypoglycemic condition is likely to occur simply when the rate or acceleration of increasing or decreasing analyte levels occur. Say does not provide a suggestion or a motivation to modify this approach by making the calculation of a slope of a line fit to the series of physiological characteristic values conditional on the level of a most recent of the series of physiological characteristic values.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha
Patent Examiner
GAU 3736
22 October 2005



ROBERT L. NASSER
PRIMARY EXAMINER

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